

STATE OF MICHIGAN
COURT OF APPEALS

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 591,

Plaintiff-Appellee,

v

CHARLES STEWART MOTT COMMUNITY
COLLEGE,

Defendant-Appellant.

UNPUBLISHED
November 10, 2005

No. 253566
Genesee Circuit Court
LC No. 03-076304-CL

Before: Meter, P.J., and Murray and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting summary disposition to plaintiff in this action involving the appeal of an arbitration award. We reverse.

Defendant argues that the trial court exceeded its authority by setting aside the arbitrator's award and granting summary disposition to plaintiff. We agree. A trial court's decision with regard to a motion for summary disposition is reviewed de novo. *Ensink v Mecosta County Gen Hosp*, 262 Mich App 518, 523; 687 NW2d 143 (2004). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In deciding a motion for summary disposition under this subrule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ensink, supra* at 523. This Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. See *Michigan Educational Employees Mutual Ins Co v Turow*, 242 Mich App 112, 114-115; 617 NW2d 725 (2000). Review is limited solely to the evidence presented to the trial court at the time the motion was decided. *Peña v Ingham County Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003).

Here, we must determine whether the trial court erred in finding that the arbitration award was beyond the contractual authority of the arbitrator. See *City of Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989). Labor arbitration stems from a contract, and "an arbitrator's authority to resolve a dispute arising out of the appropriate interpretation of a collective bargaining agreement [(CBA)] is derived exclusively from the contractual agreement of the parties." *Id.* Judicial review of an arbitrator's decision is limited,

and “[a] court may not review an arbitrator’s factual findings or decision on the merits.” *Id.* Rather, a court may only determine whether the arbitrator’s award “‘draws its essence from the collective bargaining agreement.’” *Port Huron Area School Dist v Port Huron Ed Ass’n*, 426 Mich 143, 152; 393 NW2d 811 (1986), quoting *United Steelworkers v Enterprise Wheel & Car Corp.*, 363 US 593, 597; 80 S Ct 1358; 4 L Ed 2d 1424 (1960); see also *Sheriff of Lenawee County v Police Officers Labor Council*, 239 Mich App 111, 117-119; 607 NW2d 742 (1999). As long as the arbitrator’s decision is based on a construction of the contract, the court cannot overturn the decision even if it disagrees with the arbitrator’s interpretation. See *United Steelworkers*, *supra* at 598-599.

In this case, the arbitrator’s authority was derived from the CBA between plaintiff and defendant. Article III, paragraph B, of the CBA reads as follows:

The [College] Board hereby retains and reserves unto itself, without limitation, all the powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Michigan and of the United States, except as expressly limited by the terms of this Agreement.

Defendant argues that the arbitrator properly found that defendant had a right to determine that plaintiff voluntarily quit because this determination was not expressly limited by the terms of the CBA. We agree.

While Article XI.A of the CBA places a fourteen-day notice requirement on a resigning employee, the plain language of this provision does not expressly prevent defendant from determining that an employee has voluntarily quit. Article XI, section A, establishes the following procedure *for an employee* who wishes to voluntarily quit:

1. All unit members shall give written notice of intention to resign at least fourteen (14) days prior to effective date thereof. Such notice shall be filed in the Office of Human Resources.
2. Any unit member who resigns forfeits all rights except for unused vacation time.

This provision clearly places a duty on an employee who wishes to resign, but it places no express restriction on an employer in determining that an employee has voluntarily quit. Thus, because Article XI.A placed no express restrictions on the employer’s ability to determine the existence of a “voluntary quit,” the arbitrator made a plausible and reasonable interpretation of the contract when he held that the provisions of Article III.B – which reserved for defendant all rights not expressly limited in the contract – gave defendant the power to determine that plaintiff voluntarily quit.

The arbitrator did not exceed his authority under the CBA; his award “drew its essence” from the contract, specifically, from Article III.B. The arbitrator found, as a matter of fact, that plaintiff voluntarily quit her employment by refusing to appear for work after her employer demanded her to do so. On appellate review of an arbitration award, an arbitrator’s findings of fact are final and not reviewable. *Lincoln Park*, *supra* at 4. Given that finding, the arbitrator

properly looked to the CBA's provisions and found that Article III.B gave defendant the power to determine that plaintiff voluntarily quit her employment. While plaintiff argues for a different interpretation of Article III.B in relation to Article XI.A, mere disagreement with the arbitrator's interpretation of the contract cannot result in overturning the award. See *United Steelworkers, supra* at 598-599. In this case, the arbitrator looked to the CBA and made a reasonable interpretation of its provisions; our inquiry and review ends there. *Port Huron, supra* at 152. The parties bargained for an arbitrator to decide issues under the CBA and must live with that decision unless it is clearly contrary to an express term of the contract. *Lincoln Park, supra* at 4. Because that is not the case here, reversal is warranted.

Reversed and remanded for entry of an order granting summary disposition to defendant. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Bill Schuette